

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MICHAEL GIESBRECHT,

Plaintiff,

v.

WARDEN GARRETT, *et al.*,

Defendants.

Case No. 3:22-cv-00113-RCJ-CSD

**ORDER**

**I. DISCUSSION**

On March 1, 2022, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights Complaint under 42 U.S.C. § 1983 (ECF No. 1-3) and filed a motion for leave *in forma pauperis* and to proceed, affidavit in support of request to proceed *in forma pauperis*, and notice of authorization to obtain financial records (ECF Nos. 1, 1-1, 1-2). Plaintiff’s application to proceed *in forma pauperis* is incomplete. Plaintiff has not submitted his application on this Court’s approved form together with a financial certificate or an inmate account statement for the previous six-month period.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to commence a civil action may apply to proceed *in forma pauperis*, which allows the inmate to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three of the following documents to the Court:

(1) a completed **Application to Proceed in Forma Pauperis for Inmate**, on this Court’s approved form (i.e. pages 1 through 3 with the inmate’s two signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court’s approved form), and

(3) a copy of the **inmate’s prison or jail trust fund account statement for the previous six-month period.**

1 In the event Plaintiff is having difficulty obtaining the required financial certificate and  
 2 inmate account statement for the previous six-month period from prison officials, Plaintiff  
 3 shall file a declaration detailing when he requested the documents, who he spoke to about  
 4 the status of the documents, who he followed up with after he did not receive the  
 5 documents, and their responses. Plaintiff's declaration shall include dates of his requests,  
 6 dates of his follow-up requests, names of the prison officials that he spoke to about the  
 7 matter, and their responses. If Plaintiff's declaration demonstrates that he has done all that  
 8 was possible to acquire the documents from prison officials, the Court will consider his  
 9 application to proceed *in forma pauperis* complete.<sup>1</sup>

10 Accordingly, the Court denies Plaintiff's application to proceed *in forma pauperis*  
 11 (ECF No. 1) without prejudice because the application is incomplete. The Court will grant  
 12 Plaintiff a one-time extension until on or before **May 16, 2022** to file a fully complete  
 13 application to proceed *in forma pauperis* containing all three of the required documents or,  
 14 alternatively, the first three pages of the application to proceed *in forma pauperis* and a  
 15 declaration detailing the efforts he took to acquire the financial certificate and inmate  
 16 account statement from prison officials. Absent unusual circumstances, the Court will not  
 17 grant any further extensions of time. If Plaintiff does not file a fully complete application to  
 18 proceed *in forma pauperis* with all three required documents or, alternatively, the first three  
 19 pages of the application to proceed *in forma pauperis* and a declaration detailing the efforts  
 20 he took to acquire the financial certificate and inmate account statement from prison  
 21 officials on or before **May 16, 2022**, the Court will recommend dismissal of this case without  
 22 prejudice for Plaintiff to file a new case with the Court when Plaintiff is able to acquire all  
 23 three of the documents needed to file a fully complete application to proceed *in forma*  
 24 *pauperis* or, alternatively, the first three pages of the application to proceed *in forma*

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25  
 26 <sup>1</sup> Plaintiff must still submit the first three pages of the application to proceed *in forma pauperis* on this  
 27 Court's approved form with his declaration. If Plaintiff does not submit the first three pages of the application  
 28 to proceed *in forma pauperis* with the declaration, the Court will recommend dismissal of this case without  
 prejudice for Plaintiff to open a new case when he is able to acquire the required documents.

1 *pauperis* and a declaration detailing the efforts he took to acquire the financial certificate  
2 and inmate account statement from prison officials.

3 A dismissal without prejudice means Plaintiff does not give up the right to refile the  
4 case with the Court, under a new case number, when Plaintiff has all three documents  
5 needed to submit with the application to proceed *in forma pauperis* or, alternatively, the first  
6 three pages of the application to proceed *in forma pauperis* and a declaration detailing the  
7 efforts he took to acquire the financial certificate and inmate account statement from prison  
8 officials. Plaintiff may choose not to file an application to proceed *in forma pauperis* and  
9 instead pay the full filing fee of \$402 on or before **May 16, 2022** to proceed with this case.

10 The Court will retain Plaintiff's civil rights Complaint (ECF No. 1-3), but the Court will  
11 not file the Complaint unless and until Plaintiff timely files a fully complete application to  
12 proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages  
13 of the application to proceed *in forma pauperis* and a declaration detailing the efforts he  
14 took to acquire the financial certificate and inmate account statement from prison officials,  
15 or pays the full \$402 filing fee.

## 16 **II. CONCLUSION**

17 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's application to  
18 proceed *in forma pauperis* (ECF No. 1) is denied without prejudice to file a new fully  
19 complete application to proceed *in forma pauperis* with all three documents.

20 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff the  
21 approved form application to proceed *in forma pauperis* by an inmate, as well as the  
22 document entitled information and instructions for filing an *in forma pauperis* application.

23 IT IS FURTHER ORDERED that on or before **May 16, 2022**, Plaintiff shall either pay  
24 the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52  
25 administrative fee) or file with the Court:

- 26 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this  
27 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two  
28

1 signatures on page 3),

2 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail  
3 official (i.e. page 4 of this Court's approved form), and

4 (3) a copy of the **inmate's prison or jail trust fund account statement for the**  
5 **previous six-month period.**

6 IT IS FURTHER ORDERED that if Plaintiff is not able to obtain his financial certificate  
7 and inmate account statement from prison officials, Plaintiff shall file the first three pages  
8 of the application to proceed *in forma pauperis* together with a declaration detailing the  
9 efforts he took to acquire the financial certificate and inmate account statement from prison  
10 officials.

11 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete application  
12 to proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages  
13 of the application to proceed *in forma pauperis* and a declaration detailing the efforts he  
14 took to acquire the financial certificate and inmate account statement from prison officials,  
15 or pay the full \$402 filing fee for a civil action on or before **May 16, 2022**, the Court will  
16 recommend dismissal of this action without prejudice for Plaintiff to refile the case with the  
17 Court, under a new case number, when Plaintiff has all three documents needed to file a  
18 complete application to proceed *in forma pauperis*.

19 IT IS FURTHER ORDERED that the Clerk of the Court shall retain Plaintiff's civil  
20 rights Complaint (ECF No.1-3) but will not file it at this time.

21 DATED: March 15, 2022

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UNITED STATES MAGISTRATE JUDGE